

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
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DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

SHERIFF MEWS, L.L.C. and
JOHN CASEY
Respondents

Case No.: I-00-10124
I-00-10179

FINAL ORDER

I. Introduction

This is a companion case to Case No. I-00-10009 and I-00-10120, involving the same Respondents and the same alleged offense – a violation of 21 DCMR 502.1, which requires persons who undertake land disturbing activities to obtain a permit. The violation in this matter allegedly occurred on or about March 1, 2000, and the Government seeks to impose additional fines, penalties and costs upon Respondents for their additional violation of §502.1.

On March 6, 2000, the Government served a Notice of Infraction (No. 00-10124) charging Respondents Sheriff Mews, L.L.C. (“Sheriff Mews”) and John Casey with violating 21 DCMR 502.1. The Notice of Infraction asserted that the infraction had taken place in a vacant lot in the 4900 block of Sheriff Road, N.E. and the 1000 block of 50th Place, N.E.¹ at Sheriff Road.

¹ Although the description of the location of the offense varies slightly from the description on the Notices of Infraction in Case No. I-00-10009 and I-00-10120, the same property is involved in both matters.

It stated that March 1, 2000 was the date that the infraction had occurred or was determined, and sought a fine of \$500.00.

Respondents did not answer the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Code §6-2715). Accordingly, on May 10, 2000, this administrative court issued an order finding Respondents in default, assessing a penalty of \$500.00 pursuant to D.C. Code § 6-2704(a)(2)(A) and requiring the Government to serve a second Notice of Infraction pursuant to by D.C. Code § 6-2712(f).

On June 6, 2000, the Government served the second Notice of Infraction (No. 00-10179). Respondents also did not answer that Notice within twenty days of service. Accordingly, on July 10, 2000, a Final Notice of Default was issued, finding Respondents in default on the second Notice of Infraction and assessing total penalties of \$1,000.00 pursuant to D.C. Code §§6-2704(a)(2)(A) and 6-2704(a)(2)(B). The Final Notice of Default also set August 2, 2000 as the date for an *ex parte* proof hearing, and afforded Respondents an opportunity to appear at the hearing to contest liability, fines, penalties or fees. Enclosed with the Final Notice of Default were copies of both the first and the second Notice of Infraction.

At the August 2 hearing, the inspector who issued the Notices of Infractions appeared and testified. Respondents did not appear. After hearing the inspector's testimony, I adjourned the hearing until August 16, 2000 so that this matter could be heard in conjunction with Case No. I-

00-10009 and I-00-10120. On August 4, 2000, I issued a scheduling order confirming the continued hearing date.

At the August 16, hearing, I received additional testimony from the inspector and admitted the Government's three exhibits (Petitioner's Exhibits 200-202) into evidence. Respondents did not appear at the hearing.

As noted, this matter was heard concurrently with Cases I-00-10009 and I-00-10120. In deciding this matter, I have taken official notice of the record in that other case. In addition, as described in the Final Order in Case No. I-00-10009 and I-00-10120, I also have relied upon the pre-filed exhibits in Case No. I-00-10186 and I-00-10233.

II. Findings of Fact

Based upon the inspector's testimony, which I find to be credible, the exhibits in evidence and the entire record in this case, I make the following findings:

1. Respondents had deposited a large pile of dirt on the property at issue on or before December 15, 2000. When the inspector visited the site on March 1, he discovered that the dirt had been spread over the property and that grading activities had taken place there some time between January 2000 and March 1.
2. No permit authorized land disturbing activities at the property at the time when the dirt spreading and grading occurred.
3. Sheriff Mews owns the property at issue.

4. Respondent John Casey is a contractor engaged in developing the property at issue on behalf of Sheriff Mews, and has represented himself as an agent for Sheriff Mews to government officials.
5. The Notices of Infraction in this matter were served on Sheriff Mews and on Mr. Casey on March 6, 2000 and June 2, 2000, as evidenced by the certificate of service signed by the Government's representative.
6. Copies of this administrative court's order dated May 10, 2000 were sent by certified mail to Sheriff Mews and John Casey at 2458 Sandburg Street, Dunn Loring VA 22027-1230 and at 1345 14th Street, N.W. Washington, D.C. 20005-3610. The copy sent to the 14th Street address was received there on May 15, 2000, as evidenced by the signed return receipt that is part of the record. The copy sent to the Dunn Loring address has not been returned to the Clerk's office by the postal service.
7. This administrative court's order of July 10, 2000 was sent by first class mail and by certified mail to Sheriff Mews and John Casey at the Dunn Loring address given above and the 14th Street address. The copies sent by first class mail to both addresses have not been returned to the Clerk by the postal service. The certified mail copy sent to the 14th Street address was received there on or about July 15, 2000, as evidenced by the return receipt that is part of the record. The certified mail copy sent to the Dunn Loring address has not been returned to the Clerk's office by the postal service.
8. This administrative court's August 4, 2000 order was sent to Sheriff Mews and Mr. Casey by certified mail to the 14th Street address and by first class mail to the

Dunn Loring address. The certified mail copy sent to the 14th Street address was received there on August 8, 2000, as evidenced by the return receipt that is part of the record. The copy sent to the Dunn Loring address was delivered there on August 8, 2000, as evidenced by the postal service's delivery confirmation that is contained in the record.

9. As found in Cases I-00-10009 and I-00-10120, the Dunn Loring address is Mr. Casey's home, and the 14th Street address is the address for Sheriff Mews listed in the District of Columbia property tax records.
10. No explanation has been offered for Respondents' failure to answer the Notices of Infraction.

III. Conclusions of Law

1. Respondents had adequate notice of the charges as mandated both by the Due Process Clause and by applicable statutes. D.C. Code §§ 1-1509(a); 6-2712(b). The July 15 order, which included copies of the Notices of Infraction, was received at Respondents' 14th Street address. Moreover, the copy of that order sent by first class mail to Mr. Casey's home address in Dunn Loring has not been returned and there is a presumption that it was received there. *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800 (1983); *McCaskill v. District of Columbia Dep't of Employment Servs.*, 572 A.2d 443, 445 (D.C. 1990); *Carroll v. District of Columbia Dep't of Employment Servs.*, 487 A.2d 622, 624 (D.C. 1985).

2. Respondents also had adequate notice of the hearing dates in this matter. As noted above, there is written confirmation that the June 9 order, which set the July 5 hearing date, was delivered to the 14th Street address, and there is a legal presumption that it was received at his Dunn Loring address. There is also written confirmation that the August 4 order, which set the additional hearing on August 16, was delivered to both the 14th Street and the Dunn Loring addresses.
3. Based on the unrefuted evidence, Mr. Casey is an agent for Sheriff Mews with respect to the development of the property at issue in this case. Notice to Mr. Casey, therefore, is sufficient notice to Sheriff Mews.
4. Section 502.1 of 21 DCMR requires any person who engages in land disturbing activities within the District of Columbia to obtain a building permit, which may not be issued until the applicant has submitted an approved erosion and sedimentation plan. The regulations define “land disturbing activity” as “any earth movement or land change which may result in soil erosion from water or wind and the movement of sediments . . . including, but not limited to, stripping, grading, excavating, transporting and filling of land, construction or demolition of buildings or structures.” 21 DCMR 599.1. Respondents’ grading of the property is one of the activities included in the definition of “land disturbing activity”. Respondents’ actions, therefore, satisfy the definition of “land disturbing activity”. Because a building permit did not authorize those actions, the placement of the soil on the property violated 21 DCMR 502.1.
5. For violating §502.1, Respondents must pay a civil fine of \$500.00. 16 DCMR 3234.1.

6. Respondents failed to answer both the first and the second Notice of Infraction without demonstrating sufficient cause for those failures, and therefore are liable for statutory penalties of \$1,000.00 in addition to the civil fine prescribed for the violation. D.C. Code §§6-2704(a)(2)(A) and 6-2704(a)(2)(B).
7. Pursuant to D.C. Code §6-2704(b) and 16 DCMR 3114.1(d), Respondents are also liable for the costs of the hearing in this matter in the amount of \$40.00.
8. This order addresses only the violation alleged in Notices of Infraction I-00-10124 and I-00-10179. A separate order issued today imposes fines, penalties and costs for the violations alleged in Notices of Infraction I-00-10009 and I-00-10120 and additional penalties in Case No. I-00-10186 and I-00-10233. The amounts imposed in this order are in addition to the ones imposed in that matter.

IV. Order

Based upon the findings of fact, the conclusions of law and the entire record in this case, it is hereby, this _____ day of _____, 2000:

ORDERED, that Respondents John Casey and Sheriff Mews, LLC are jointly and severally liable in this matter and shall cause to be remitted a single payment totaling **ONE THOUSAND FIVE HUNDRED FORTY DOLLARS (\$1,540.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715). A failure to comply with the attached payment instructions and to remit a payment within

the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' license or permit pursuant to D.C. Code § 6-2713(f).

/s/ **9-8-00**

John P. Dean
Administrative Judge